

NEW JERSEY ENVIRONMENTAL JUSTICE TASK FORCE

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**Environmental Justice
Task Force**
Office of the Commissioner,
NJDEP
PO Box 402
Trenton, NJ 08625

Statement of Findings Roselle, Union County Rahway Valley and Staten Island Railroad Petition June 15, 2005

1. Introduction

On January 28, 2005 and February 24, 2005, the Environmental Justice Task Force (EJTF) reviewed the November 15, 2004 Environmental Justice Petition (the EJ Petition) submitted by a group of 100 concerned citizens from the **Borough of Roselle** located in **Union County** (the petitioners). The EJ Petition was submitted to the EJTF pursuant to Executive Order #96 on November 15, 2004.

2. Background

In 1995, the New Jersey Department of Transportation (NJDOT) purchased the Rahway Valley Railroad and the Staten Island Railroad properties. These rail lines traverse several municipalities in Union County, including: the City of Elizabeth, City of Linden, Borough of Roselle, Township of Cranford, Borough of Roselle Park, Borough of Kenilworth, Township of Union, Township of Springfield and the City of Summit. Union County subsequently determined that reactivation of service along both of these lines would benefit the County's economic development goals and developed a plan to rehabilitate the existing right-of-way and reactivate freight train service over these lines.

On June 23, 2000, the NJDOT and the County of Union entered into an agreement whereby the County was granted the right to enter upon the railroad right-of-way to restore the railroad line for local freight service. In addition, the NJDOT granted funds to the County for this project. By providing grant monies for the project, the NJDOT must ensure compliance with applicable State and Federal law.

In May 2002, The County of Union entered into an agreement with the Morristown and Erie Railway, Inc. (M&E) to provide reconstruction oversight and operation of the line.

Staff from the NJDEP's Environmental Justice Program visited the community and met with the petitioners on December 3, 2004 to review the petition and issues of concern.

3. Summary of the EJ Petition

The Petitioners have asked the EJTF to consider several issues of concern to the community arising from the reactivation of the freight line. The issues are the following:

1. Lack of Environmental Impact Study (EIS)
 - The Board of Union County Freeholders approved the reactivation without an EIS.
 - Public funds have been allotted to the Morristown and Erie Railway (M&E) without EIS.
 - Freight trains will be allowed to transport unidentified cargo through the Borough of Roselle, and other Union County towns, without an EIS.
2. Pesticides: Use of pesticides along tracks to kill weeds.
3. Air pollution: The community is concerned about air pollution and health issues associated with diesel exhaust from train engines and cars.
4. Creosote: Old rail ties were replaced with new ones, which had been treated using creosote. Numerous piles of creosote-treated ties were/are stored throughout the neighborhood prior to tie replacement.

5. Gas Line: A Sunoco pipeline runs parallel to the railroad tracks on the west side of Roselle. The community is concerned regarding the security and integrity of the pipeline in anticipation of the reactivation of the rail line. The presence of the pipeline and its integrity was not tested to date.
6. Trees: In August 2003, PSE&G contractors cut several trees along the tracks including trees located in private properties without appropriate property owner permission or notification.
7. Health and Safety: Due to the vicinity of rail lines to three schools and numerous residences, the citizens of Roselle are very concerned about general health and safety issues. Some of these concerns include: train robberies by gangs and members of organized crime, transportation of hazardous materials, lack of safety precautions at numerous rail crossings throughout Roselle, and concern for the children that use the tracks as shortcuts to get to school, and the application of pesticides along the tracks.
8. Economic Concerns: The citizens are concerned about the lack of safety precautions at rail crossings and additional traffic congestion that will result once the line is reactivated. This could be detrimental to the shopping district.
9. Homeland Security: Containers that enter the port sites and marine terminals could be transported through Roselle. Since only between 10% to 20% of this containerized cargo is inspected, this is a serious concern to the community.
10. Quality of Life: Numerous concerns, mostly already identified above.
11. NJ Department of Transportation: During a site visit conducted by the EJ Program staff on December 3, 2004, the petitioners stated they frustration about their communications with the NJ DOT relating to issues surrounding railroad crossings safety and the community.

4. Findings of the EJTF

The EJTF has carefully evaluated available information pertaining to the petitioners' claims and finds that although some of the issues raised in the petition fall within the scope of Executive Order #96, most are within the jurisdiction of federal, and not of State agencies. Therefore, because, the EJTF can not substantially contribute to efforts necessary to resolve the issues raised by the petitioners, the EJTF has not selected the petition from the concerned citizens of the Borough of Roselle to move forward to the Action Plan development stage. In making this determination the EJTF has considered the Environmental Justice Advisory Council's recommendation to further this petition. Although the EJTF has not selected the petition, the EJTF members with authority in several areas of concern have committed to the following:

NJDOT:

- The NJDOT will continue to work with Union County officials to hold the M&E accountable for the May 2002 operating agreement and subsequent agreements pertaining to quality of life and safety issues in the Borough of Roselle. Some of these agreements include that M&E is to limit rail operations to no more than 3 trains a week, in the first three years of the reactivation of the rail line, increasing to 5 trains a week in years 4 and 5. In addition, trains would be limited to no more than 15 cars in length and hours of operation would occur during off-peak hours, thus avoiding night-time operations and peak commuter times.
- As directed by the NJDOT Commissioner, the Division of Design Services, Railroad Engineering & Safety Unit will complete the Diagnostic Team recommendations pertaining to the safety and protection of the traveling public at three remaining rail crossings in the Borough of Roselle. These recommendations are incorporated in a document called a Commissioner's ORDER, which specifies appropriate railroad warning devices, signs and pavement marking required at each crossing. These orders also identify the agency charged with implementing and enforcing said recommendations. The ORDERs generally embody the Commissioner's adoption and acceptance of the recommendations of the Diagnostic Team. ORDERs for the Amsterdam Ave., Chestnut Street, and St. George's Ave (Rt. 27) crossings have been issued. ORDERs for Pine Street, Ninth Ave., and Wheatsheaf Road are pending and are expected to be issued in March 2005.
- The NJDOT will continue to answer comments and correspondence from concerned citizens in the community related to the crossings and reactivation of the line in a diligent and timely manner.
- The NJDOT will strongly encourage the County of Union and the M&E to provide community education and outreach to schools regarding railroad crossing safety.

- The NJDOT will ensure that no additional creosote ties are piled in the community without public notification and protective measures, i.e., piles must be covered and stored for a minimum amount of time at a given location.

NJDEP:

- The NJDEP's Pesticide Control Program will reach out to the Morristown and Erie Railway to ensure that future spraying episodes along the rail line right-of-way will be performed in accordance with all applicable state and federal laws and regulations. Some of these regulations require community-wide notification to inform residents about spraying. There is also a provision in the regulations that allows residents to individually request from the company applying pesticides on the right-of-way, 12-hour advance notification directly to them before spraying is to occur. In addition, the Department will provide periodic oversight during upcoming pesticide applications in the community to ensure that the applications are performed in a manner that is protective of human health.

Additional Actions:

- On January 31, 2005, U.S. Senator Jon Corzine announced proposed legislation to make railways and surrounding cities safer from chemical accidents and terrorism after recent train accidents in South Carolina and Pennsylvania. This new bill, the Chemical Rail Security Act of 2005, would deal specifically with the transportation of hazardous chemicals. The chemical rail act would establish federal guidelines for the physical condition of rail cars, particularly those that transport hazardous materials. It would also establish a coordinated notification system between federal, state and local law enforcement, aimed at better tracking the movement of hazardous material throughout the nation's rail system. The bill would also call for penalties for violations of rail security regulations and would provide whistleblower protection for those who notify officials of failures to comply.

In response to the Roselle EJ Petition, the EJTF will submit a letter to Senator Corzine strongly supporting this legislation.

- The EJTF recognizes that several issues raised in the EJ Petition fall outside the jurisdiction of the EJTF agencies, because federal regulations exempt railroads from most state regulations. Therefore, the EJTF strongly recommends that appropriate agencies work with the Environmental Justice Advisory Council to identify policy and possible legislative recommendations associated with the issues raised in this Environmental Justice petition.